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**JUL 3 0 2004**

In re Application of  
de Block

Application No. 09/461,416  
Filed: December 16, 1999  
Attorney Docket No. 2428-0120P

**OFFICE OF PETITIONS**  
**ON PETITION**

This decision concerns the June 10, 2004 "Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b)."

The petition is **DISMISSED as inapplicable, in that, the application is not abandoned.**

The application was held abandoned for failure to timely file an appeal brief.

The sequence of events pertinent to the instant petition is summarized below:

- 4/22/03: Final Office action, setting forth a 3-month shortened statutory reply period.
- 9/22/03: Proposed amendment and 2-month extension of time.
- 10/21/03: Notice of Appeal and filing fee for Notice of Appeal; further extension of time of 1-month.
- 10/23/03: Advisory Action: 9/22/03 proposed amendment not entered.
- 5/21/04: **Continuation application filed (Application No. 10/849,930).**
- 6/29/04: Examiner "Communication re Appeal": 10/21/03 appeal dismissed because no appeal brief filed; application abandoned because no claims allowed.

The Office notes that upon filing of the 10/21/03 Notice of Appeal, Applicant may file an Appeal Brief on or before May 21, 2004 to prevent abandonment of the application (2 months plus a 5-month extension-of-time). On May 21, 2004, Applicant filed, instead, the continuation application which has been accorded a May 21, 2004 filing date.

While the continuation application was not accompanied by a request for a 5-month extension of time and/or the requisite extension-of-time fee, a constructive petition for an extension of time under 37 CFR 1.17 was, nonetheless, included on page 2 of the December 16, 1999 application transmittal.<sup>1</sup> Accordingly, the continuation application was timely filed, and the application was not abandoned. The instant petition to revive the application is thus **dismissed as inapplicable**.

The \$1,330 petition fee enclosed with the petition has been credited to Deposit Account No. 02-2448 as authorized in the petition.

Also accompanying the petition is a \$950 payment intended for a 3-month extension of time for filing the petition. Given that a 5-month extension of time (\$2,010) is required for filing the May 21, 2004 continuation application, the deficiency of \$1,060 has been charged to the above deposit account as also authorized in the petition.

Since the continuation application (10/849,930) was timely filed on May 21, 2004, co-pendency remains between the instant parent application and Application No. 10/849,930.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.



RC Tang  
Petitions Attorney  
Office of Petitions

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<sup>1</sup> 37 CFR 1.136(a)(3) (Rev. 2, May 2004) (An authorization to charge . . . fees required under §1.17 . . . will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time . . .). 37 CFR 1.17(a) relates to extension-of-time fees under §1.136(a).